



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: CKJ Realty/Bayview Group

File: B-244492

Date: October 21, 1991

Mary Ratcliff, Esq., for the protester.
Lawrence Marcus, Esq., United States Department of Housing and Urban Development, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably determined to exclude protester, ranked 9th out of 13 offerors, from competitive range because, despite protester's low proposed price, its technical deficiencies were such that protester had no reasonable chance of being selected for award.

DECISION

CKJ Realty/Bayview Group protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 121-91-3015, issued by the United States Department of Housing and Urban Development (HUD) for multi-family project management services for HUD properties in Northern California and Nevada. The protester essentially contends that its proposal was improperly evaluated and excluded from the competitive range.

We deny the protest.

The RFP, issued on March 8, 1991, contemplated the award of an indefinite quantity, combination fixed-price/cost reimbursement (no fee) type contract for the performance of management and related services for "troubled projects" (*i.e.*, projects plagued with the problems associated with drug use, vandalism, and insufficient finances) as outlined in the statement of work.

The RFP contained the following seven technical evaluation factors and the percentage weight factor assigned to each evaluation factor: (1) demonstrated experience in

implementing HUD regulations, policies, and procedures for multifamily projects (5); (2) demonstrated experience and capability in managing similar projects (15); (3) demonstrated experience in managing major repair and rehabilitation programs (25); (4) demonstrated capability and commitment of key personnel (5); (5) demonstrated capacity to handle the sub-contracting responsibility (15); (6) demonstrated experience in facilitating the formation of resident organizations and resident management (15); and (7) demonstrated understanding of the physical, economic, social, and security conditions of the projects to be managed, and provided effective management plan to facilitate resident involvement in management and operations (20).

The RFP, which provided for multiple awards, stated that an offeror's proposed price, although secondary to its technical merit, would be considered in determining which offers were the most advantageous to the agency. The RFP stated that only as technical scores became more equal would price become the determining factor for the awards. The RFP provided that the awards could be made to other than the lowest-priced offerors and contemplated an award in each geographical area solicited.

Thirteen firms, including the protester, submitted initial technical proposals by the amended closing date of April 30. The agency's four-member technical evaluation panel (TEP) individually scored each offeror's proposal for each technical evaluation factor by assigning points corresponding to adjectival descriptions (i.e., unacceptable--0 points; poor--1 to 2 points; fair--3 to 4 points; good--5 to 6 points; very good--7 to 8 points; and excellent--9 to 10 points). The individual scores for each evaluation factor were supported by narratives listing the strengths and weaknesses of each offeror's proposal. The individual evaluators' scores for each evaluation factor were multiplied by the assigned percentage weight factor and then the weighted scores for each evaluation factor were totaled to determine an overall consensus score. After the technical evaluation, but prior to making the competitive range determination, the TEP was provided with and considered each offeror's price.

The initial consensus scores ranged from 0 to 86.5 out of 100 points. The agency determined a point score cutoff of 74 for the competitive range. Any offeror whose consensus score was less than 74 points was excluded from the competitive range because the agency believed these offerors had no reasonable chance of being selected for award. Republic Realty Services, Inc., which received 86.5 points, John Stewart Company, which received 77.5 points, and MTB Investments, which received 74 points, were included in the competitive range. By letter dated May 29, the agency

informed the protester, which received 34.6 points and was ranked 9th out of 13 offerors, of its exclusion from the competitive range. Following discussions with the three competitive range offerors, which submitted prices 33 to 66 percent higher than the protester, and the submission of best and final offers (BAFOs), the agency, on June 3, awarded contracts to Republic and Stewart, higher-technically rated, higher-priced offerors, for HUD projects in California and to MTB, also a higher-technically rated, higher-priced offeror, for HUD projects in Nevada. On June 17, the protester filed this protest challenging the exclusion of its proposal from the competitive range.

The protester argues that the agency improperly evaluated its proposal and excluded it from the competitive range. The protester maintains that since its proposal was not rejected as technically unacceptable and since its price was less than the prices of the offerors in the competitive range, it should have been included in the competitive range.

The law and implementing regulations require that written or oral discussions be held with all offerors within the competitive range which includes all proposals that have a reasonable chance of being selected for award, cost or price and other factors as stated in the solicitation having been considered. 41 U.S.C. § 253b(d)(2) (1988); Federal Acquisition Regulation (FAR) § 15.609. In reviewing protests concerning the reasonableness of the evaluation of a technical proposal, and the resulting determination of whether an offeror is within the competitive range, we do not independently reevaluate the proposal. Rather, our review is limited to determining whether the agency's evaluation was reasonable and otherwise free from violations of procurement laws and regulations, since procuring officials are entitled to a reasonable degree of discretion in evaluating proposals. Campbell Eng'g, Inc., B-231126, Aug. 11, 1988, 88-2 CPD ¶ 136.

Here, the RFP clearly stated that an offeror's technical merit was more important than its price in determining the most advantageous offerors to the agency. While the protester received overall "fair" to "good" ratings for five of the seven technical areas, the protester also received overall "poor" ratings in the critical technical areas involving its capacity to handle the subcontracting responsibility and its experience in facilitating the formation of resident organizations and resident management.

Specifically, with respect to an offeror's capacity to handle the subcontracting responsibility, the RFP required an offeror to describe its arrangements with subcontractors, the extent of the work anticipated to be subcontracted, and the method of inspection of a subcontractor's work, including

forms and tracking systems to be used. The record shows that in its proposal, the protester merely states that it could coordinate subcontractors, inspect their work, and pay them promptly based on its experience in these matters. Yet, nowhere in its proposal does the protester describe any specific arrangements with subcontractors, including any internal policies and procedures for hiring subcontractors or its actual access to subcontractors, nor does the protester describe the extent of the work it anticipates will be subcontracted or its method of inspection. Although the protester generally states it has experience with subcontractors, it fails to describe this experience in its proposal.


Moreover, the RFP required an offeror to demonstrate its experience in encouraging, facilitating, and participating in the formation of resident organizations and resident management, leading to successful resident management and ownership. The record shows that while the protester states in its proposal that it would encourage the establishment of resident associations in which residents would determine and address their social needs through social activities and social programs, the protester does not describe experiences it has had with specific resident associations nor how it would involve residents in daily management activities in order to encourage the development of necessary skills and knowledge to enable eventual management and ownership by the residents themselves. In short, the proposal contains no evidence of actual experience, but rather describes in a general manner what the protester would do if it received the contract.

Thus, the record shows that while the agency did not find the protester technically unacceptable, it did find the protester technically deficient in the above technical areas. The agency reasonably believed that the protester's lack of demonstrated experience in these technical areas could only be developed and improved over time and not through discussions. Furthermore, in accordance with the FAR requirement that price be considered in making the competitive range determination, the record shows that the agency did consider each offeror's price, including the protester's significantly lower price, prior to making the competitive range determination.

We find the record supports the agency's conclusion that while the protester's proposal was not overall technically unacceptable, it was clearly technically deficient in two primary technical areas, and that because of these technical deficiencies, notwithstanding the protester's significantly lower price, the protester had no reasonable chance of being

selected for award. Thus, the agency's exclusion of the protester from the competitive range was reasonable. Campbell Eng'g, Inc., supra.

Accordingly, the protest is denied.1/


James F. Hinchman
General Counsel

1/ Contrary to the protester's assertion, our review of the record revealed no evidence of bias in the evaluation of its proposal; rather, the record showed that the evaluation of the protester's proposal was in accordance with the RFP's stated evaluation methodology. In addition, although the protester alleged possible collusive and monopolistic practices by the awardees, the proper forum for consideration of such alleged practices and violations of the antitrust laws is the Department of Justice, not the General Accounting Office. See Diemaster Tool, Inc., B-238877.3, Nov. 7, 1990, 91-1 CPD ¶ 162. Finally, this solicitation was issued on an unrestricted basis and the protester, a small disadvantaged business, was not entitled to any preferential consideration.